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Junius, Jr., pseud.

Some thoughts on the Reform bill of 1932

Torquay

1859

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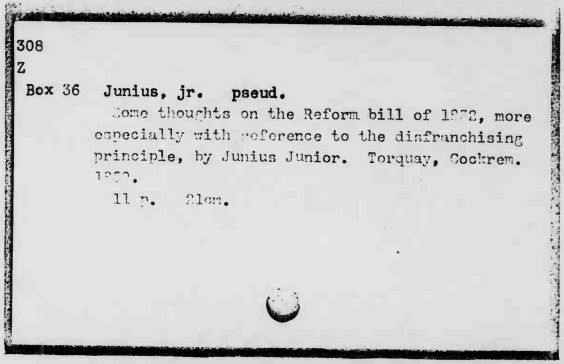

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SOME THOUGHTS

ON

THE REFORM BILL OF 1832,

MORE ESPECIALLY WITH REFERENCE TO

THE DISFRANCHISING PRINCIPLE:

By JUNIUS JUNIOR.

—

APRIL, 1859.

—

TORQUAY:
PRINTED BY E. COCKREM, 10, STRAND.

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INTRODUCTION TO THE READER.

It so happens that from circumstances of education, and of early life, to which allusion need not be made on the present occasion, the attention of the Author has been particularly fixed upon the subject of the Constitution of Great Britain. In the course of his studies, the proposed Reform Bill of 1832, and more particularly its Schedules of Disfranchisement, excited his most serious reflections; and he took the liberty, under a fictitious name, of warning the late Sir Robert Peel, then Mr. Peel at the Home Office, against allowing, if it were in his power to prevent it, any tampering with the ancient Chartered Rights of this Country. What effect his address might have had upon the mind of Mr. Peel himself, cannot, now perhaps, be ascertained; but certainly it did not tend to prevent the mischief which was foreseen; and the obnoxious Schedules passed, and became part of the Act of Parliament, *Law* he will not call it, by which the measure of Reform was established. In his humble, unknown, and isolated position in life, no one, from honest conviction, has been a more zealous Conservative than the Author. He endeavoured, by every means in his power, to prevent the passing of the Reform Bill; but when he found it forced upon us as a governing principle, he consoled himself with the reflection that amidst such an abundance of evil, some good must certainly be discoverable. That such a measure as this Act is, should, however, be *final*, he could never consent; and when he explains his reasons for this opinion, the Reader may perhaps be induced to acknowledge the weight and importance of them, and to use all the influence in his power, to introduce and enforce them in the political world. In conclusion, the Author may perhaps be allowed to say, that had the subject-matter of the following Pages, been taken in hand by any other individual or party, he should not have considered it his duty to have troubled the Public with his lucubrations.

JUNIUS JUNIOR.

Some Thoughts on the Reform Bill of 1832, more especially with reference to the Disfranchising Principle.

By the fundamental Laws, and original Constitution of this country, no man can be *disfranchised*, except on *conviction* of High Treason or Felony. The right inherent in certain individuals of voting for Members of the House of Commons, as well as the privilege of returning Representatives to Parliament belonging to Boroughs, have, throughout the history of our Constitution, been considered most sacred, and have been guarded with the most jealous care and anxiety. Although for the highest crimes of which man in society can be guilty, forfeiture of his franchises might take place on conviction of the *individual;* yet it was held that a *Corporation*, being an *Ens Rationis*, could not possibly commit an indictable Crime; could neither *do* nor suffer a *Wrong*; could not *sue* or be *sued*; and consequently could neither make a *Surrender*, nor suffer a *Forfeiture* of their Franchises, *corporaliter*:—but any wrong *done* or *suffered*, must

be confined to the *existing individual person* concerned, and could in no case compromise the *Corporation*. Neither could such wrong extend in its consequences beyond those individuals; for otherwise the IMMORTALITY of Corporations, so strenuously guarded by the wisdom of the Constitution, would soon have become a nullity. With regard to *Surrenders*, though in the reign of Henry the Eighth, the Ecclesiastical Corporations are *said* to have *surrendered*, it is asked what did they really surrender? Not certainly their political rights and *franchises*, but merely their Lands and Houses. True, the *persons* for the time being, ceased to exist, and the Corporation, in consequence was dissolved; but their *franchises* remained *in esse*, and could not possibly be surrendered, nor forfeited, nor destroyed, nor quashed, in any other way, or by any other means. And so true is it, that these franchises are inextinguishable, that it is contended, if, which God forbid! Abbots, Priors, and other Ecclesiastical Corporations of the Romish Æra, were to be restored, they would, without any Act of the Legislature, but merely by the Common Law of the Land, at once resume their seats in Parliament.

The disfranchisement of Boroughs, indeed disfranchisement of Incorporated Bodies generally, on any pretence whatever, can be considered as nothing less than an atrocious robbery of their freehold interests, and their hereditary Birthright. It is so, as regards the individuals themselves submitting to it, but it is much more so to their legal successors, the *generations*

yet unborn, who have no power left them, even of remonstrance; and for whom the existing generation is Trustee. No general Law can possibly deprive of their franchises, *even* the *existing* generation in a Borough:—it may suspend or forfeit the personal rights of *individuals* for good and sufficient *legal* cause; but the representation of a Borough is strictly protected from violation by the Great Charter, and by the Bill of Rights, which forbids the punishment of Misdemeanours, such as Bribery and Corruption, with a severity which belongs only to Crimes, such as High Treason and Felony. And let it be recollected that the conviction, in the latter case, can only reach the *individual freeholder*, but can never compromise the incorporated rights of the Borough.

By such anomalous Legislation as that contained in the Schedules of the Reform Bill of 1832, that principle which alone constitutes *Law*, namely, "recta et perfecta Ratio," is entirely disregarded and ignored. An eloquent and patriotic political Author of a former Age,* has well and reasonably said that "there are many things which we ought to affirm, can *not* be done by King, Lords, and Commons," and he instances the very case in point, by saying, "Among these I reckon the disfranchising of Boroughs, with a general view to improvement." It is certain, an Act of Parliament can never give to a *moral Absurdity* the validity of *Law*. Can it for a moment be imagined, that a power has been vested in a *Repre-*

* Junius.

sentative to destroy his immediate *Constituent;* in the *being created* to extinguish his *Creator?*

It is a fatal error in Politics to suppose that because the Legislature is *supreme*, it is therefore *arbitrary* and *omnipotent*. If the act of a "Majority can disfranchise *ten* Boroughs, why not *twenty*, why not the whole Kingdom," as the same Auther observes; and why not any County, under pretence of corruption? In short, in this very Reform Bill, a ready weapon has been forged for the use of any Despot, whether he be *one*, as Charles or James the Second, or whether he be "that worst of Tyrants, an usurping Crowd." Whilst such absurdities continue unrepealed, the Reform Bill itself must be considered *invalid:*—for there is no such thing as *bad Law*, but it is *no Law!*

In the Disfranchisement of Boroughs, upon any pretence, and especially upon that of Corruption, which is perfectly inadequate, the Legislature, according to Locke, acts against the *trust* reposed in it by the Nation; for he says most justly, "that it does so, when it invades the property of the subject, in order to make itself master, or *arbitrary disposer*, of the *lives*, *liberties*, or *fortunes*, of the People."*

It is the fashion of the present Age, to vote all Laws which oppose the views of a Party, calling themselves the *Progress* Party, obsolete!

The Author trusts that such a principle, illegal and unconstitutional as it is, will never receive support

* On Government, Book 2, Chap. 19, &c.

and countenance from any one who wishes well to the Liberty and Security of his Country. A quotation from a celebrated Lawyer of the time of the Revolution, will suffice to set this question entirely at rest; for he says, "Acts of Parliament can never be antiquated."* But if Acts of Parliament can never be antiquated, much less can the Common Law, by which, I apprehend, many, if not all of these Boroughs held their franchises; for the same able Authority proceeds to say, "the Common Law is not a Law, unless it be repeated and practised:" &c., &c. . . . "when people have tried and used such and such an Act, and found it useful and profitable to the public," &c. . . . "the act of *repeating* begets a *Custom*, and so becomes in its name and nature, the Common Law of the Land:"—which can never, on account of its *antiquity*, become *obsolete*, or suffer abatement.

For the reasons above detailed, the Author, though a zealous Conservative of the Protestant Liberty of his Country, and of those principles which placed the House of Brunswick on the Throne, cannot subscribe to the opinions of those who wish to make the present Reform Bill *final:*—but whenever Statesmen and Legislators, and the People themselves, shall become so reasonable as to *remodel* the Bill on Constitutional principles, discarding for ever the idea of Disfranchisement, then, and not till then, the Author will desire to see it as permanent and everlasting as the

* See Pollexfen's Reports.

Act of Settlement of the Crown of these Kingdoms! Let it also be remembered, that if these Boroughs be once again restored to their freehold rights, it will not be the first time they have been thus treated. Cromwell disfranchised many of them; but before an end was put to the Usurpation, his son Richard, convinced, as it would seem, of the error of his father, restored them all.* So also at the Revolution, they were all again reinstated in their ancient and original franchises.

In conclusion, it does not seem at all to follow, that the restoration of these Boroughs to their chartered rights, should involve the necessity of their being restored in their primitive *Rottenness*. On the contrary, their restoration, and in consequence, the eternal reprobation of all future Disfranchisement, seems to offer a just and reasonable opportunity of increasing the Elective Franchise, by providing that to the original Borough of Old Sarum for instance, should be added neighbouring Parishes, or the Hundred, as might appear most advisable to the wisdom of the Legislature. There are also some other points which have been hastily and inadvertently introduced into the provisions of the original Reform Bill, which might be considerably improved in any subsequent Act. For instance, the power of the High Sheriff to fix the day of Nomination, as well as that of Election, at his own discretion, should be abolished; and *both* should be fixed by *Law*, at so many days at

* See the History of England, by Lord Macaulay.

least, as might seem convenient, after the promulgation of the Writ. And again, in *contested Elections*, *two days*, extending from sun-rise to sun-set, especially in Counties, should surely be allowed for the Polling. These points, however, are of less political importance than the putting an end for ever to the Disfranchising Principle. There is yet, before the Author concludes, one most important consideration in any attempt at Reform, to which he begs to call the attention of the Political world; and that is, the urgent necessity of preventing any considerable increase in the *number* of Members of Parliament; for if, the House of Commons had many more added to its present quantum, it would be utterly impossible for one Speaker to control the Debates, or keep order in so vast an Assembly. To exceed in this respect, would create "confusion worse confounded," and prevent any business from being satisfactorily transacted.

THE END.

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